

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
At Beckley

FILED

22 2005

TERESA L. DEPPNER, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia

**UNITED STATES FIDELITY
& GUARANTY COMPANY,**

Plaintiff,

v.

CIVIL ACTION NO.: 5:03-0702

**CHARLIE SANDERS,
LORETTA BAILEY, Administratrix of
the ESTATE OF SHAWN KEITH BAILEY,
DARREN C. LUSK D/B/A BIG CHIG, INC.,
BLUESTONE COAL COMPANY,
LOGAN & KANAWHA COAL CO., INC.,
KAT TRUCKING COMPANY, and
RONNIE JOE LUSK,**

Defendants.

**MOTION FOR SUMMARY JUDGMENT OF
UNITED STATES FIDELITY & GUARANTY COMPANY**

COMES NOW the Plaintiff, United States Fidelity & Guaranty Company, ["USF&G"], by and through its attorneys, Joanna I. Tabit, Esquire, Jennifer R. Anderson, Esquire, and the law firm of Steptoe & Johnson, PLLC, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves this Court for entry of an Order awarding it summary judgment in the above-referenced matter.

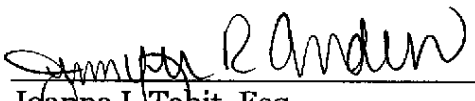
USF&G filed this declaratory judgment action against all interested parties in the underlying civil action, *Charlie Sanders, et al. v. Bluestone Coal Corporation, et al.*, Circuit Court of Wyoming County, West Virginia, Civil Action No. 03-C-100, regarding the availability of insurance coverage under a business auto policy issued to

Darren C. Lusk d/b/a Big Chig ["Big Chig"] for a fatal accident involving a coal truck owned and operated by KAT Trucking Company and allegedly overloaded by Bluestone Coal Corporation. USF&G submits that no duty to defend or indemnify the underlying action exists where, as a matter of law, (1) the underlying Complaint does not involve a vehicle covered under Big Chig's business auto policy; and (2) the underlying Complaint does not assert claims for which Big Chig can be held liable. Even if coverage existed, which is disputed, such coverage would be excess over any other collectible insurance.

WHEREFORE, the Plaintiff, United States Fidelity & Guaranty Company, respectfully requests this Court enter an Order awarding it summary judgment on its request for declaratory relief. The legal basis for this Motion is more fully set forth in the contemporaneously-filed Memorandum of Law.

**UNITED STATES FIDELITY
& GUARANTY COMPANY**
By Counsel

STEPTOE & JOHNSON, PLLC
Of Counsel


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